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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,246	02/05/2002	Marc Horna	16787-6	8505

7590 08/18/2004

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EXAMINER

DEL SOLE, JOSEPH S

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 08/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/068,246

Applicant(s)

HORNA ET AL.

Examiner

Joseph S. Del Sole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21,23 and 27-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21,23 and 27-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The substitute specification filed 7/19/04 has been entered.

Claim Objections

2. Claim 21 is objected to because of the following informalities: **a)** at line 2 of claim 21 "characterized in that it comprises a nozzle arrangement (12) having a nozzle arrangement (12)" should be changed to --having a nozzle arrangement (12)--; and **b)** at lines 2-3 of claim 21 "for extruding dough substances," should be deleted because the first line of claim 21 already states "for extruding doughy substances". Appropriate correction is required.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 21, 23 and 27-33 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10-12

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and 16-18 (as amended 5/24/04) of copending Application No. 10/062,201 in view of Cockings et al (5,492,706) and Allen (1,759,928).

Claims 10-12 and 16-18 of 10/062,201 teach a nozzle carrier (claim 10) having a nozzle arrangement having an inner nozzle for extruding an inner substance and two outer nozzles for extruding at least one outer substance (claim 10, lines 6-8); the outer nozzles are rotatable about a common axis of rotation (claim 10, line 7); the inner nozzle has a mouth (claim 10, line 5) and the outer nozzles each have a mouth (claim 10, line 7); a stator in which a first second and third feed channel are formed (claim 10, lines 11-12); a rotor which carries the nozzles (claim 10, line 13) is rotatably supported in the stator (claim 10, lines 13-14) and contains a connection channel which connect the first feed channel to the inner nozzle (claim 10, lines 14-15); between the stator and the rotor a first annular space is formed which connects the second feed channel to a first outer nozzle and a second annular space is formed which connects the third feed channel to the second outer nozzle (claim 10, lines 16-20); between the rotor and the stator a first, second and third seal are disposed, wherein the first seal seals off the first connection channel, the first and second seal seal off the first annular space and the second and third seal seal off the second annular space (claim 11); the axis of rotation of the rotor is the center line of the nozzles (claim 10); the at least one annular space in longitudinal section is in sections circular or elliptical in shape (claim 12); the rotor in the region of at least one annular space is designed in such a way that, as it rotates, it simultaneously conveys a substance contained in the annular space (claim 10); the rotor in the region of at least one annular space is in cross section of a flattened oval

design (claim 12); the rotor is drivable by means of a traction mechanism gearing, in particular a toothed belt drive, or a toothed gearing with intersecting axes (claim 16); a plurality of nozzle carriers are disposed side by side and are drivable by means of a single traction mechanism gearing, in particular a toothed belt drive, or a single toothed gearing with intersecting axes (claim 17); and each nozzle carrier is disposed so as to be inclined at an angle of around 25° to the vertical (claim 18).

Claims 10-12 and 16-18 of 10/062,201 fail to teach a second inner nozzle; the outer nozzle surrounding an inner nozzle with clearance; the inner nozzles being rotatable about a common axis of rotation; the mouths of the outer nozzles disposed in flow direction downstream of the mouths of the inner nozzles; or a second connection channel which connects the first feed channel to a second inner nozzle.

Cockings et al teach a nozzle arrangement (Figures 1 and 4) having two inner nozzles connected by connection channels to a feed channel (Fig 4, #20) and two outer nozzles (Fig 4, #21) wherein the outer nozzles each surround an inner nozzle with clearance, and all the nozzles are rotatable about a common axis of rotation (col 2, lines 4-25) for the purpose of producing two bicomponent coaxial strands twisted about one another (col 2, lines 25-45). Allen teaches the mouth on an outer nozzle (Fig 2, #24) disposed in the flow direction downstream of the mouth of an inner nozzle (Fig 2, #25) for the purpose of allowing the discharge from the outer nozzle to begin contact with the discharge from the inner nozzle before exiting the die (page 1, line 100 - page 2, line 7).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of claims 10-12 and 16-19 of

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10/062,201 with the nozzle arrangement configured such that two inner nozzles exist each with an outer nozzle surrounding the inner nozzle with clearance, with each of the nozzles being rotatable about a common axis of rotation and the mouths of the outer nozzles disposed in the flow direction downstream of the mouths of the inner nozzle as taught by Cockings et al and Allen because it enables the production of a product composed of two bicomponent strands twisted about one another.

This is a provisional obviousness-type double patenting rejection.

Response to Arguments

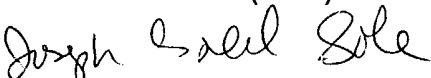
5. Applicant's arguments with respect to claims 21, 23 and 27-33 have been considered but are moot in view of the new ground(s) of rejection.

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wanda Walker, can be reached at (571) 272-1151. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from the either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll-free).



J.S.D.

August 13, 2004